

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER AGENCY	:	
	:	
Petition for Approval of the 2017 IPA	:	Docket No. 16-0453
Procurement Plan pursuant to	:	
Section 16-111.5(d)(4) of the Public	:	
Utilities Act	:	

STAFF OF THE ILLINOIS COMMERCE COMMISSION
REPLY TO RESPONSES TO OBJECTIONS TO THE ILLINOIS POWER AGENCY'S
2017 PROCUREMENT PLAN

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October 31, 2016

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Pursuant to the October 5, 2016 Notice of Schedule and Notice of Administrative Law Judge's Ruling, the Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, respectfully submits this Reply to Responses to Objections to the Illinois Power Agency's ("IPA") 2017 Procurement Plan ("Plan" or "IPA Plan"). Staff also submits the affidavits of James Zolnierek, Jennifer H. Morris and Richard J. Zuraski in support of facts and non-legal matters contained herein.

I. BACKGROUND

On September 27, 2016, the IPA filed its Plan for the five year procurement planning period from June 2017 through May 2022 with the Illinois Commerce Commission ("Commission") thereby initiating this docket.

On or about October 3, 2016, pursuant to Section 16-111.5(d)(3) of the Illinois Public Utilities Act ("PUA"), Staff and the following parties served on each other and filed Responses and/or Objections to the Plan:

Commonwealth Edison Company (“ComEd”),
Ameren Illinois Company (“Ameren Illinois,” “Ameren,” or “AIC”),
Environmental Law and Policy Center (“ELPC”),
MidAmerican Energy Company (“MEC” or “MidAmerican”),
Renewables Suppliers,¹
The People of the State of Illinois by Lisa Madigan, Attorney General (“AG”),
Exelon Generation Company, LLC (“Exelon”), and
the Natural Resources Defense Council (“NRDC”).

On October 5, 2016, the Chief Administrative Law Judge of the Commission provided notice that, “pursuant to Section 16-111.5(d)(3) of the Public Utilities Act, no hearing in the above-referenced matter is determined to be necessary.” (October 5, 2016, Notice of Chief Administrative Law Judge’s Ruling.) A Notice of Schedule and Notice of Administrative Law Judge’s Ruling provides for the filing of: Responses to Objections (“Response”) and Replies to Responses (“Reply”), due October 21, 2016 and October 31, 2016, respectively. (October 5, 2016, Notice of Schedule and Notice of Administrative Law Judge’s Ruling.) The ALJ’s schedule also provides for an ALJ’s Proposed Order (“ALJPO”), exceptions and reply exceptions, due November 14, 2016, November 21, 2016, and December 2, 2016, respectively.

On October 21, 2016 Staff and the following nine parties² served on each other and filed Responses:

¹ The Renewables Suppliers are comprised of: EDP Renewables North America LLC and its affiliated project companies Meadow Lake Wind Farm I LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC and Blackstone Wind Farm LLC; Invenergy LLC and its affiliated project companies Grand Ridge Energy IV LLC, and Invenergy Illinois Solar; and NextEra Energy Resources, LLC and its subsidiary project company FPL Energy Illinois Wind, LLC. (Renewables Suppliers Objections, 1.)

² Putting aside the IPA and AG, all of the parties listed were granted intervention status on October 17, 2016 by the ALJ ruling except for: ISEA and ERC. On October 27, 2016, ISEA filed a petition to intervene. On

IPA,
ComEd,
Ameren,
Renewables Suppliers,
ELPC,
AG,
NRDC,
the Illinois Solar Energy Association (“ISEA”), and
the Energy Resources Center at the University of Illinois at Chicago (“ERC”).

Staff’s Reply to the Responses filed by IPA, Renewables Suppliers, ELPC, ISEA, AG, NRDC, ERC and ComEd are set forth below.³ The absence of a Staff response or reply to arguments or positions made in a party’s Objections or Response, does not imply that Staff agrees or accepts those arguments or positions.

II. ARGUMENT

A. Distributed Generation Procurement [Section 8.4]

1. Response to IPA, ELPC, ISEA and Renewables Suppliers

IPA (IPA Response, 6-7), ELPC (ELPC Response, 1-4), ISEA (ISEA Response, 1-3), and Renewables Suppliers (Renewables Suppliers Response, 1-3) object to Staff’s proposal (Staff Objections, 4-5) to split the annual quantity targets and spending limits for distributed generation renewable energy credits evenly between 5 and 10 year contracts

October 19, 2016, the Board of Trustees of the University of Illinois filed a petition to intervene in this matter on behalf of ERC.

³ The section headings and sections of the IPA Plan at issue are indicated in bold and brackets [] below, respectively. For any new Section proposed by a party, the sections and headings are in quotes.

acquired through one or two procurement events; they prefer the IPA's proposal to utilize solely 5-year contracts acquired through two procurement events. (IPA Plan, 96-102.) Furthermore, no potential bidders supported the Staff proposal. Hence, in order to limit the issues in the current proceeding, and without waiving its right to bring up the issue in future proceedings, Staff is withdrawing its proposal from the current proceeding. Staff would urge the IPA and the Commission to remain receptive of such alternatives in the future, if participation and the volume of bidding in distributed generation Renewable Energy Credit procurement events continue to underwhelm.

B. 2016 Section 16-111.5B SAG Workshop Subcommittee [Section 9.2]

1. Response to ComEd and IPA

Both ComEd and the IPA disagree with Staff's request for the Commission to require Ameren and ComEd to report all expected Section 16-111.5B costs to the IPA and for the IPA, based upon this information, to report total expected Section 16-111.5B costs in its procurement plan filing. (ComEd Response, 7-8; IPA Response, 10.)

ComEd and the IPA argue that this information is irrelevant to understanding the cost effectiveness of individual energy efficiency programs proposed for approval and further, that the Staff "admits" or "concedes" this. (IPA Response, 10; ComEd Response, 8.) Staff has made no such admissions or concessions. In Staff's Objections, Staff identified that non-scalable non-program-specific costs should not be considered when making incremental program decisions. Staff clearly stated that "if the incremental benefits from the program exceed any additional incremental costs from the program, then the program will increase net benefits produced by Section 16-111.5B programs in total." (Staff Objections, 8, emphasis added.) What Staff did not say is that this

incremental analysis implies or means that non-scalable non-program-specific costs are irrelevant for assessing the Section 16-111.5B program costs in total. If non-scalable non-program-specific costs are sufficiently large, then the implementation of Section 16-111.5B programs in total could prove costlier than the cost of comparable supply or could raise the overall cost of electric service for the utilities' customers. While making incremental program decisions under such circumstances might minimize the difference between the cost of Section 16-111.5B programs and the cost of comparable supply or reduce the cost increases to utility customers, it does not mean that Section 16-111.5B programs will not in total prove costlier than the cost of comparable supply or raise the overall cost of electric service for the utilities' customers.

The parties further imply that non-scalable non-program-specific cost disclosures are not consistent with the statutory requirements for Section 16-111.5B or that there is no legal basis for requiring such information. (IPA Response, 10; ComEd Response, 8.) Staff disagrees. Section 16-111.5B(a)(3) requires, among other things, an assessment of whether programs reduce the overall cost of electric service and how the cost of such measures compares to the prevailing cost of supply. Again, when assessing the incremental value of adding a program to the collection of Section 16-111.5B programs, this assessment should be done ignoring non-scalable non-program-specific costs. It does not mean, however, that the IPA and the Commission should not consider whether Section 16-111.5B programs will in total prove costlier than the cost of comparable supply or raise the overall cost of electric service for the utilities' customers.

Both IPA and ComEd object to Staff's request to make the Section 16-111.5B plan capable of being audited. (ComEd Response, 8; IPA Response, 10-11.) The focus on

Staff's use of the term audit is misplaced. In using this terminology, Staff implies nothing more than that the IPA Plan should include information so that the IPA, Commission, and any other interested party can examine the plan to determine how the costs of Section 16-111.5B programs compare to the cost of comparable supply, how much they raise or lower the overall cost of electric service for the utilities' customers, and the impact of these programs on customer bills.

The IPA argues that reporting non-scalable non-program-specific costs will create confusion regarding program benefits. (IPA Response, 11.) This is precisely the opposite of the impact of Staff's proposal. Failing to incorporate all costs associated with Section 16-111.5B provides a misleading picture of the expected costs associated with Section 16-111.5B as well as the net benefits of Section 16-111.5B. By failing to report a portion of Section 16-111.5B costs, the actual net benefit of the Section 16-111.5B programs in total is certainly less than an assessment of net benefits that includes only a partial reporting of costs.

IPA argues that utilities' estimates of costs are best guesses and may prove inaccurate. (IPA Response, 11.) This, however, is true of all program costs and benefits in the IPA Plan. Indeed, the IPA Plan is built around estimates, and the utilities' estimates of their own Section 16-111.5B costs are just as informative as any other estimates that form the basis for the IPA Plan.

Finally, IPA states that Staff fails to assert that non-scalable non-program-specific costs are not available to Staff currently or available elsewhere. To be clear, ComEd's best estimate of the expected full non-scalable non-program-specific costs associated with the current IPA Plan have not been provided to Staff and are not, to Staff's

knowledge, publicly available. (ComEd Response to JHM 1.01.) They will not be filed in proceedings or filings prior to when the Commission acts to approve the IPA Plan. Thus, even if they were reported on an ex post basis, they would not provide information to the IPA or Commission on the expected value of the current IPA Plan. Therefore, absent approval of Staff's proposal, the IPA, Commission, and the public will not know the full expected cost of Section 16-111.5B before programs are implemented.

For all of the reasons above and those set forth in Staff's Objections, the Commission should require Ameren and ComEd to report all expected Section 16-111.5B costs to the IPA and for the IPA, based upon this information, to report total expected Section 16-111.5B costs in its procurement plan filing.

C. Improving/Refining Bids [Section 9.4.2]

1. Response to AG

In its Response, the AG makes two sets of recommendations to the Commission that warrant Commission adoption: (1) a directive to have stakeholders further explore through workshops what constitutes reasonable energy efficiency contract terms that strike the appropriate balance of attracting bidders of all sizes, both local and national, and ensuring that ratepayers or utility shareholders are not left holding the bag for poorly implemented programs; and (2) a directive to the utilities to help clarify to both the utilities and the Section 16-111.5B vendors that the utilities should be negotiating and actively managing the Section 16-111.5B energy efficiency program contracts with the same level of vigor and interest as their Section 8-103 energy efficiency program contracts to ensure ratepayer funds are being used for high quality cost-effective programs that are consistent with best practices and achieve the maximum amount of forecasted savings at the least

cost. (AG Response, 2-7.) Staff supports the AG's requests. Commission adoption of the AG's requests should help improve the quality and success of the Section 16-111.5B energy efficiency programs to the benefit of ratepayers who are paying for these programs. Accordingly, the Commission should adopt the AG's requests.

D. "Vendor Contracts" ["Section 9.4.3"] and "ComEd Vendor Contract Templates Recommended for Approval" ["Section 9.6.8"]⁴

1. Response to IPA and ComEd

With respect to ComEd's proposed contract templates, the IPA states that "while ComEd cites workshop process conclusion as grounds for the template approval through this proceeding, these templates were never introduced to the Agency (or presumably any other parties) during the workshop process." (IPA Response, 25.) Putting aside that objection, the IPA states "that it has no (known) objections to the content of the contract templates, but reserves the right to modify its position should other parties identify aspects of the templates that may be problematic." (Id.) Staff stands by its position set forth in its Response that approval of ComEd's proposed contract templates as part of the 2017 IPA Plan would be inconsistent with the PUA, in particular, Section 16-111.5B(a)(5). (See Staff Response, 7-11.) Even though the IPA states that it has no (known) objections to the actual content of the contract templates, Staff has not had sufficient time to address all potential problems with the templates other than to observe that it does have identifiable concerns with the ComEd contract templates. In light of ComEd's failure to seek input from the IPA and interested stakeholders on its contract templates as required

⁴ In its Objections, ComEd proposed two new sections to the IPA Plan. The first new section proposed by ComEd is "Vendor Contracts" which would become Section 9.4.3. The second new section proposed by ComEd is "ComEd Vendor Contract Templates Recommended for Approval" which would become Section 9.6.8.

by statute, the Commission should decline to adopt ComEd's contract templates and related proposed modifications to the IPA Plan.

E. Programs Deemed “Not Responsive to RFP”⁵ by Ameren Illinois [Section 9.5.4]

1. Response to NRDC

NRDC states “Ameren has argued that the IPA Plan should exclude a program that produces gas savings that are not ‘incidental’ to the production of electricity savings. Staff says that it agrees with that approach.” (NRDC Response, 1, footnote excluded.) This statement implies that Staff supports rejection of programs that produce more than incidental gas savings. This is not the case. To clarify, Staff’s position is that “[t]he IPA should procure measures that are predominately justified based upon how the measures save electricity, reduce overall costs of electric service, and compare to the prevailing cost of comparable supply.” (Staff Objections, 14.)

F. ComEd Programs Recommended for Approval [Section 9.6.8]

1. Response to IPA and ERC

Both the IPA and ERC take issue with Staff’s recommendation that the Commission should reject the energy efficiency programs that do not lead to a reduction in the overall cost of electric service (i.e., that fail the electric-only Utility Cost Test). (IPA Response, 23-24; ERC Response, 2-4.) Both the IPA and ERC argue that if the Total Resource Cost (“TRC”) test ratio is greater than one, the program must be included in the plan. (Id.) The Commission should reject IPA’s and ERC’s arguments. As Staff

⁵ Please be advised that Section 9.5.4 has always been part of the IPA 2017 Plan, even though quotes appear in this section heading description.

discussed in its Objections, the results of the Utility Cost Test (“UCT”) are provided to satisfy the Section 16-111.5B(a)(3)(D) requirement to include an “[a]nalysis showing that the new or expanded cost-effective energy efficiency programs or measures would lead to a reduction in the overall cost of electric service.” 220 ILCS 5/16-111.5B(a)(3)(D) (emphasis added). (Staff Objections, 18-19.) The focus on the reduction in the cost of electric service is consistent with the standard which the Commission is required to apply to the approval of IPA Plans under the PUA. 220 ILCS 5/16-111.5(d)(4). That PUA standard being, the plan will “ensure adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability.” 220 ILCS 5/16-111.5(d)(4) (emphasis added). A program with a TRC greater than one but a UCT less than one would not meet that Section 5/16-111.5(d)(4) electric service cost requirement. For the reasons set forth above and those stated in Staff’s Objections, the Commission should not include in the IPA Plan energy efficiency programs that do not lead to a reduction in the overall cost of electric service. Accordingly, the Commission should direct the IPA to exclude from the Plan, the Middle School Energy Education Campaign Program and the Low Income Multifamily Retrofits program. (Staff Objections, 18-19.)

III. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission consider Staff's Reply to Responses to Objections to the IPA's 2017 Procurement Plan, Response to Objections to the IPA's 2017 Procurement Plan, Objections to the IPA's 2017 Procurement Plan, and the various recommendations contained therein.

Respectfully submitted,

/s/
JOHN C. FEELEY
JAMES V. OLIVERO

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Illinois Commerce Commission
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*Counsel for the Staff of the
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Docket No. 16-0453

AFFIDAVIT OF JENNIFER H. MORRIS

State of Illinois)
)
County of Sangamon)

The undersigned, under oath, deposes and states as follows:

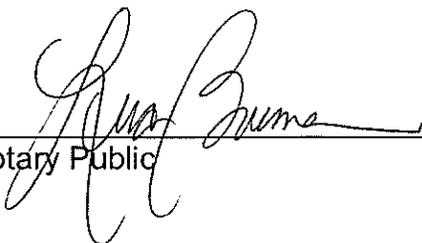
1. My name is Jennifer H. Morris. I am employed by the Illinois Commerce Commission as an Economist in the Commission's Policy Division.
2. I have read the Staff of the Illinois Commerce Commission's Reply to Responses to Objections to the Illinois Power Agency's 2017 Procurement Plan ("Reply").
3. I have personal knowledge of facts and matters discussed in the Reply and, to the best of my knowledge, information and belief, those facts and non-legal opinions expressed in the Reply are true and accurate and, if sworn as a witness, I could testify concerning them.

Further affiant sayeth not.

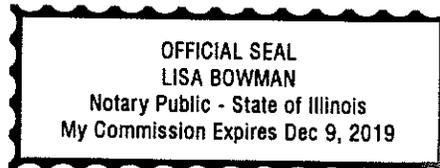

Jennifer H. Morris

Subscribed and sworn to before me

This 31st day of October, 2016.



Notary Public



**STATE OF ILLINOIS
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AFFIDAVIT OF JAMES M. ZOLNIEREK

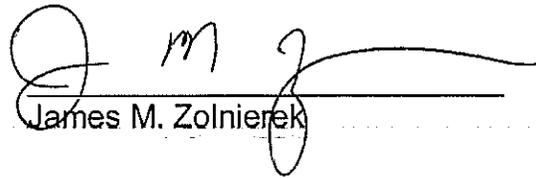
State of Illinois)
)
County of Sangamon)



The undersigned, under oath, deposes and states as follows:

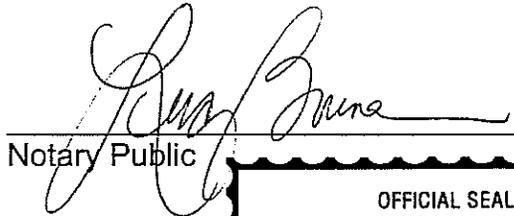
1. My name is James M. Zolnierек. I am employed by the Illinois Commerce Commission as the Director of the Commission's Policy Division.
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3. I have personal knowledge of facts and matters discussed in the Reply and, to the best of my knowledge, information and belief, those facts and non-legal opinions expressed in the Reply are true and accurate and, if sworn as a witness, I could testify concerning them.

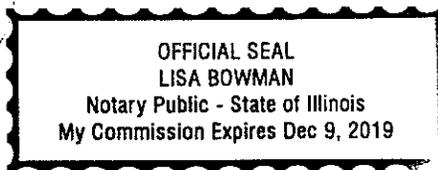
Further affiant sayeth not.


James M. Zolnierek

Subscribed and sworn to before me

This 31st day of October, 2016.


Notary Public



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ILLINOIS COMMERCE COMMISSION**

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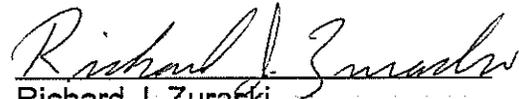
AFFIDAVIT OF RICHARD J. ZURASKI

State of Illinois)
)
County of Sangamon)

The undersigned, under oath, deposes and states as follows:

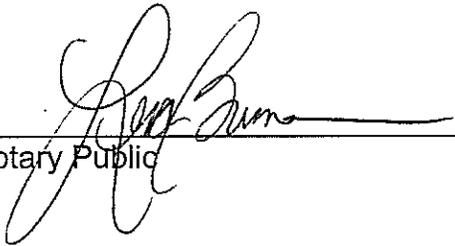
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3. I have personal knowledge of facts and matters discussed in the Reply and, to the best of my knowledge, information and belief, those facts and non-legal opinions expressed in the Reply are true and accurate and, if sworn as a witness, I could testify concerning them.

Further affiant sayeth not.


Richard J. Zuraski

Subscribed and sworn to before me

This 31st day of October, 2016.


Notary Public

